IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE G. BIKSHAPATHY**

**and**
**THE HON'BLE MR JUSTICE P.S.NARAYANA**

**WRIT PETITION Nos.20159, 20209, 21244, 21689, 21691, 21791, 22124, 22212, 22580, 22986, 23473 of 2004 AND 40 AND 3083 OF 2005**

**WRIT PETITION No: 20159 of 2004**

Between:

1 P. Vijaykumar, S/o Appaiah, Gudur, Nellore District.
2 Md. Ghouse Basham S/o Abdul Shukur,
Sub Divisional Prohibition & Excise Office, Markapur, Prakasam District.

**..... PETITIONERS**

AND

1 The Government of Andhra Pradesh, Rep. by its Principal Secretary, Revenue (EXcise-I) Department, Secretariat, Hyderabad.
2 The Commissioner of Prohibition & Excise, Government of Andhra Pradesh, Hyderabad.
3 The Deputy Commissioner of Prohibition & Excise, Government of Andhra Pradesh, Guntur.
4 S. Mohan Rao,
O/o Prohibition & Excise Superintendent, Nellore.
5 S. Srinivasulu,
O/o Prohibition & Excise Superintendent, Atmakur.
6 Y. Venkateswarlu, O/o Prohibition & Excise Superintendent, Nellore.

7 T.B. Rajender Prasad,
O/o Dy. Commissioner of Prohibition & Excise, Guntur.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ order or direction more particularly one in the nature of Writ of "Certiorari" call for the records relating to the order dated 27-2-2004 passed in O.A.No. 5931of 1999 and order dated 7-9-2004 passed in M.A.No. 2423/2004 in Rev.M.A.No. 2969/2004 in O.A.No. 5931/1999 by he Hon'ble Andhra Pradesh Administrative Tribunal, Hyderabad and quash the same as unjust, without any basis and contrary to the principles of natural justice further direct the respondents to continue the petitioners as I/c Prohibition and Excise Sub Inspectors with all consequential benefits.

**Counsel for the Petitioners: MR.M.RATNA REDDY**

**Counsel for the Respondent Nos.1 to 3: GP FOR REVENUE (EXCISE)**

**Counsel for the Respondent Nos.1 to 7: MR.P.V.RAMANA (CAVEATORS)**

**WRIT PETITION No: 20209 of 2004**

Between:

1 S. Sirajuddin, S/o. Kaja Peer,
R/o. Erraguntla, Kadapa District.
2 P. Peeru Saheb, S/o. P. Hussain Saheb,
R/o. Madakiasira, Ananthapur, Ananthapur District.
3 C. Nagaraja Reddy, S/o. C. Narayana Reddy,
R/o. Kadumuru, Kurnool, Kurnool District.
4 V. Sudhakar, S/o. Late Parusuramaiah,
R/o. Sattenapalli, Guntur, Guntur District.

**..... PETITIONERS**

AND

1 The Government of Andhra Pradesh, Rep. by its Principal Secretary, Revenue (Excise-I), Department, Secretariat, Hyderabad.
2 The Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Hyderabad.
3 The Deputy Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Guntur.
4 S. Mohan Rao,

O/o. Prohibition and Excise Superintendent, Nellore.
5 S. Srinivasulu,
O/o. Prohibition and Excise Superintendent, Atmakur.
6 Y. Venkateswarlu,
O/o. Prohibition and Excise Superintendent, Nellore.
7 T.B. Rajender Prasad,
O/o. Prohibition and Excise Superintendent, Guntur.
8 The Deputy Commissioner of Prohibition and Excise Govt. of A.P., Kurnool
(R8 is impleaded as per court order dt. 23-11-2004 in
WPMP 28029 of 2004)

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ, Order or Orders, Direction or Directions to quash the judgment of the 1st Respondent in O.A.No.5931/1999 dated 27-2-2004 and also to set aside the consequential G.O.Ms.No.815 dated 15-10-2004 issued by the 2nd Respondent and to issue consequential directions to Respondents 2 and 3 to continue the petitioners as Prohibition and Excise sub-inspectors.

**Counsel for the Petitioners: MR.V.SRINIVAS**

**Counsel for the Respondents: GP FOR PROHIBITION & EXCISE**

**WRIT PETITION No: 21244 of 2004**

Between:

1 K.S.C. Sekhar, S/o late Peter
Prohibition & Excise Sub-Inspector, Sub-Divisional Task Force, Vijayawada, Krishna District
2 A.V. Rama Rao S/o Sri Dharmaiah
Sub-Inspector, Rampachodavaram, East Godavari District
3 R.V.L Narasimha Rao S/o Sri Bapl Raju
Sub-Inspector, Tanuku West Godavari District
4 K. Tata Reddy S/o late Dana Reddy
Sub-Inspector, Jangareddygudem, West Godavari District
5 P.N. Subrahmanyam S/o late Venkat Rao
Prohibition & Excise Sub-Inspector, Vijayawada(East), Krishna District
6 Y. Eswara Rao S/o late Apparao
Prohibition & Excise Enforcement wing Vijayawada, Krishna District
7 P.V. Satyanarayana S/o late Anjaneyulu
Prohibition & Excise Sub-Inspector, Sub-Divisional Task Force, Gudavada, Krishna District
8 P. Satyanarayana Rao S/o Sri Papa Rao
Sub-Inspector, Amalapuram, East Godavari District

9 Bh. Ramakrishna Murthy S/o Sri Lakshmi Narasimham
Sub-Inspector, Vijayawada (West), Krishna District
10 P. Mahatama Raju S/o Sri Samba Murthy, Apparao
Prathipadu, East Godavari District
11 M. Siva Sankar S/o Ratnacharyulu
Prohibition & Excise Sub-Inspector, Kakinada, East Godavari District
12 K. Bangaraiah S/o Late Bangaraiah
Sub- Inspector, Ranasthalam, Srikakulam District.

**..... PETITIONERS**

AND

1 The Government of Andhra Peadesh, rep by Principal Secretary to Government, Revenue (Excise-1)
Department, Secretariat, Hyderabad
2 The Commissioner of Prohibition and Excise Government of Andhra Pradesh, Hyderabad
3 The Deputy Commissioner of Prohibition & Excise, Government of Andhra Pradesh, Guntur.
4 S. Mohan Rao, Junior Assistant, O/o Prohibition and Excise Superintendent, Nellore.
5 S. Srinivasulu, Junior Assistant, O/o Prohibition and Excise Superintendent, Atmakur.
6 Y. Venkateswarly, Junior Assistant, O/o Prohibition and Excise Superintendent, Nellore.
7 T.B. Rajender Prasad, Junior Assistant, O/o Dy. Commissioner of Prohibition and Excise, Guntur.
8 Ch. Venkatakumar S/o. Sainarayana
O/o. Sub Divisional Prohibition & Excise Officer, Eluru, W.G. District
9 K. Narasimha Rao S/o. Laxmana Swamy
O/o. Proh. & Excise Superintendent, Machilipatnam, Krishna District.
10 G.V. Narasinga Rao S/o. Suryanarayana
O/o. Proh. & Excise Superintendent, Eluru, W.G. District

11 Shaik Mahabub Subhani S/o. S.K. Subhani
O/o.Dy. Commissioner of Proh. & Excise Kakinada, E.G. District
12 Shaik Hyder S/o.Shaik Mahabub Jani
O/o.Dy. Commissioner of Proh. & Excise Kakinada, E.G. District.
13 K. Rambabu S/o. K, Sathi Raju
O/o. Assistant Commissioner of Proh. & Excise Kakinada, E.G. District
14 Md. Jainulabdin S/o. Mohiddin
O/o. Proh. & Excise Inspector Bhimavaram, E.G. District
15 Shaik Mohammad Ali S/o. Sk. Mastan Ali
O/o. Proh. & Excise Superintendent, Machilipatnam, Krishna District
16 Palika Venkat Raman S/o. Palika Naga Raju
O/o.Dy. Commissioner of Proh. & Excise Kakinada, E.G. District
(RR 8to16 impleaded as per court order dt. 2-2-2005 in WPMP 33109 of 2004)

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or direction more in the nature of Writ of Mandamus declaring the orders dated 27-02-2004 passed in O.A. No. 5931 of 1999on the file of the A.P Administrative Tribunal Hyderabad and consequential orders of the first respondent issued in G.O.Ms. No. 815 Revenue (Excise-I(2) Department dated 15-10-2004 as illegal, arbitrary and unsustainable and consequentially direct the first and second respondents to continue the petitioners as Prohibition and Excise Sub-Inspectors on regular basis, after calling for the files.

**Counsel for the Petitioners: MR.P.V.S.S.S.RAMA RAO**

**Counsel for the Respondents: GP FOR EDUCATION**

**WRIT PETITION No: 21689 of 2004**

Between:

1 P.Bikshapathy Rao, S/o Rajaiah,
Incharge Proh. & Excise Sub. Inspector, S.H.O. Suryapet, Nalgonda District
2 Mohd. Samiullah, S/o Rahamatullah,
Incharge Proh. & Excise Sub.Inspector, S.H.O, Amanagal, Mahaboobnagar District
3 B.Sanjeevaiah, S/o Balaiah,
Incharge Proh. & Excise Sub. Inspector, SHO Andole, Medak District
4 Khaja Moizuddin, S/o Khaja Moinuddin,
Incharge Proh. & Excise Sub. Inspector, SHO Shadnagar, Mahaboobnagar District
5 M.A.Ghaffar, S/o Quadeer,
Incharge Proh. & Excise Sub. Inspector, SHO Telkapally, Mahaboobnagar

District
6 K.Ramulu, S/o Pentaiah,
Incharge Proh. & Excise Sub. Inspector, S.T.F., Hyderabad
7 S.Mohan, S/o Bhomaiah,
Incharge Proh. & Excise Sub. Inspector, Check Post, Yamcha, Nizamabad District, Division Nizamabad
8 M.Bhikshapathi, S/o Yellaiah,
Incharge Proh. & Excise Sub. Inspector, S.H.O. Palvancha, Khammam District, Warangal Division
9 Irshad Mohd.Khan, S/o M.A.Hameed Khan,
Incharge Proh. & Excise Sub. Inspector, S.H.O., Jammikunta, Karimnagar District, Warangal Division
10 Md.Jeelani, S/o Shaik Meera,
Incharge Proh. & Excise Sub. Inspector, S.H.O. Kodangal, Mahaboobnagar District
11 Mohammed Sadiq, S/o Mohd.John,
Incharge Proh. & Excise Sub. Inspector, S.H.O., Vemulawada, Karimnagar District

**..... PETITIONERS**

AND

1 S.Mohan Rao, S/o
O/o The Proh. & Excise Superintendent, Nellore.
2 S.Srinivasulu, S/o
O/o The Proh. & Excise Superintendent, Athmakur
3 Y.Venkateswarlu, S/o
O/o The Proh & Excise Superintendent, Nellore
4 T.B.Rajender Prasad, S/o
Deputy Commissioner of Proh. & Excise, Guntur

5 The Government of Andhra Pradesh, rep. by its Principal Secretary to Government, Revenue (Excise-1) Department, Secretariat, Hyderabad
6 The Commissioner of Prohibition & Excise, Govt. of A.P., Hyderabad
7 The Deputy Commissioner of Proh. & Excise, Government of A.P., Guntur
8 The Deputy Commissioner of Proh. & Excise, Hyderabad
9 The Deputy Commissioner of Proh. & Excise, Warangal
10 K. Krupakar Reddy, S/o. K. Janardhan Reddy,
SHO, Shadnagar, Mahaboobnagar Division, Mahaboobnagar District.
11 G. Narsing Rao, S/o. Dasthanna,
Nizamabad Division, Nizamabad District.
12 G. Bhaskar Rao, S/o. Ramulu,
SHO Kodangal, Mahaboobnagar District.
(RR 10 to 12 are impleaded as per Court Order dated 25-1-05 in WPMP 29141/04)

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or direction more in the nature of Writ of certiorari calling for the order of the Hon'ble A.P. Administrative Tribunal dated 27-2-2004 in O.A.No.5931 of 1999 and the consequential G.O.Ms.No.815 dated 15-10-2004 and consequential proceedings of the Commissioner of Proh. and Excise in Cr.No.6891/2004/CPE/H1 dated 18-11-2004 and quash the same by holding them as illegal, bad and arbitrary and further direct the respondents to continue the petitioners as Prohibition and Excise sub-Inspectors by regularizing their services.

**Counsel for the Petitioners: MR.J.R.MANOHAR RAO**

**Counsel for the Respondents: GP FOR PROHIBITION & EXCISE**

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**WRIT PETITION No: 21691 of 2004**

Between:

1 M.Anjaneyulu s/o M.Nagappa.
Station Kodad, Nalgonda District.
2 S.Shakaraiah S/o Kistanna
Station Kodad, Nalgonda District.

**..... PETITIONERS**

AND

1 S.Mohan Rao S/o
O/o the Proh &Excise Superintendent , Nellore
2 S.Srinivasulu S/o
O/o the Proh &Excise Superintendent , Athmakur
3 Y.Venkateswarlu S/o
O/o the Proh &Excise Superintendent , Nellore
4 T.B.Rajender Prasad s/o
O/o Deputy Commissioner of Proh & Excise , Guntur.
5 The Government of Andhra Pradesh rep. by its Principal Secretary to Government, Revenue (Excise-I) Department, Secretariat, Hyderabad
6 The Commissioner of Prohibition and Excise, Govt. of AP. Hyderabad.
7 The Deputy Commissioner of Proh. and Excise Government of AP. Guntur.
8 The Deputy Commissioner of Proh. & Excise, Hyderabad
9 The Deputy Commissioner of Proh & Excise, Mahaboobnagar.
10 Madhusudhan Rao S/o. Siddanna
S.H.O., Ramannapet, Nalgonda District
11 G. Ramakrishnaiah S/o. G. Buchaiah
S.H.O., Ramannapet, Nalgonda District
12 V. Gayatri W/o. Vikramjeet Singh
Task Force, Hyderabad
13 K. Krupakar Reddy S/o. K. Janardhan Reddy
S.H.O., Shadnagar, Mahabubnagar District
14 G. Narsing Rao S/o. Dasthanna.
Nizamabad Division, Nizamabad
15 G. Bhaskar Rao S/o. Ramulu
S.H.O., Kodangal, Mahabubnagar District
(RR 10 to 15 impleaded as per court order dt. 25.1.2005 in WPMP 29142 of 2004)

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more in the nature of writ of order of the Hon'ble A.P. Administrative Tribunal dt. 27.2.2004 in O.A.No.5931 of 1999 and the consequential G.O.Ms.No. 815 dt. 15.10.2004 and consequential proceedings of the Commissioner of Proh. and Excise in Cr.No. 6891/2004/CPE/H1 dt. 18.11.2004 and quash the same by holding them as illegal, bad and arbitrary and further direct the respondents to continue the petitioners as Proh. & Excise Sub. Inspectors by regularizing their services.

**Counsel for the Petitioners: MR.J.R.MANOHAR RAO**

**Counsel for the Respondent Nos.1 to 4: MR.P.V.RAMANA**

**Counsel for the Respondent Nos.5 to 9: GP FOR PROHIBITION & EXCISE**

**WRIT PETITION No: 21791 of 2004**

Between:

1 M. Yesudas, S/o. M. Paul Subbaiah,
Proh & Excise Station, Satyavedu, Chittoor District.
2 P. Khaza Khan, S/o. P. Nawaz Khan,
O/o. of the Asst. Commissioner of Proh & Excise, - Enforcement Wing, Anantapur.
3 K. Hanumanthu, S/o. K. Naganna,
Proh & Excise Station, Tadipatri, Anantapur District.

**..... PETITIONERS**

AND

1 The Government of A.P., rep. by its Principle Secretary to Government, Revenue (Excise-I(2) Dept., Secretariat, Hyderabad/500 001.
2 The Commissioner of Prohibition and Excise, A.P. M.J. Road, Hyderabad-500 001.
3 The Deputy Commissioner of Proh & Excise, Kurnool Range, Kurnool-518 001.
4 S. Mohan Rao,
O/o. Superintendent of Prohibition and Excise, Guntur.
5 S. Srinivasulu,
O/o. Superintendent, Proh and Excise, Atmakur.
6 Y. Venkateswarlu,
Superintendent, Proh and Excise, Nellore.
7 T.B. Rajender Prasad,
O/o. of the Deputy Commissioner of Proh and Excise, Guntur.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue a writ of Mandamus, or any other appropriate writ, order or direction, declaring the orders dt. 27.2.2004 passed in O.A.No. 5931 of 1999 by the Hon'ble A.P. Administrative Tribunal, Hyderabad consequential G.O.Ms.No.815 Revenue (Excise I (2) Department, dt. 15.10.2004 issued by the 1st respondent and consequential proceedings dt. 18.11.2004 of the 3rd respondent issued in Cr.No.6891/2004/CPE/H1 as illegal, arbitrary and unsustainable and consequently direct the respondents 1 to 3rd respondent herein to continue the petitioners as prohibition and Excise Sub-Inspectors.

**Counsel for the Petitioners: MR.T.P.ACHARYA**

**Counsel for the Respondents: GP FOR PROHIBITION & EXCISE**

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**WRIT PETITION No: 22124 of 2004**

Between:

T. Vittal Singh, S/o. T. Ram Singh,
Tungaturthi, Nalgonda District.

**..... PETITIONER**

AND

1 The Government of A.P., rep. by its Special Chief Secretary,
Revenue (Excise) Department, Secretariat, Hyd.
2 The Commissioner of Proh& Exice, Government of A.P., Nampally, Hyderabad.
3 The Deputy Commissioner of Proh & Excise, Hyderabad Division, Nampally, Hyderabad.
4 S. Mohan Rao,
O/o. Proh & Excise Superintendent, Nellore.
5 S. Srinivasulu,
O/o. Proh & Excise Superintendent, Atmakur.

6 Y. Venkateswarlu,
O/o. Proh & Excise Superintendent, Nellore.
7 T. B. Rajender Prasad,
O/o. Dy. Commissioner for Proh & Excise, Guntur.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Certiorari calling for the records relating to the order of the Hon'ble A.P. Administrative Tribunal dt. 27.02.2004 in O.A.No.5931 of 1999 and the consequential G.O.Ms.No.815, Dt. 15.10.2004 and consequential proceedings of the Commissioner of Proh & Excise in Cr.No.6891/2004/CPE/H1, dt. 18.11.2004 and quash the same by holding them as illegal, bad and arbitrary and further direct the respondents to continue the petitioner as Proh & Excise Sub-Inspector by regularizing his services and to pass such other order.

**Counsel for the Petitioner: MR.M.RAMALINGESWARA REDDY**

**Counsel for the Respondent Nos.1 to 3: GP FOR PROHIBITION & EXCISE**

**Counsel for the Respondent Nos.4 to 7: MR.P.V. RAMANA (CAVEATORS)**

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**WRIT PETITION No : 22212 of 2004**

Between:

G.Ravi Varma S/o. Late Ramachandra Raju
Sub Inspector Somepta, Srikakulam District.

**..... PETITIONER**

AND

1 The Government of Andhra Pradesh, rep. by its Principal Secretary to Government Revenue (Excise-I) Department
Secretariat, Hyderabad.
2 The Commissioner of Prohibition and Excise, Government of Andhra Pradeh, Hyderabad.
3 The Deputy Commissioner of Prohibition and Excise, Government of A.P. Guntur.
4 S.Mohan Rao, Junior Assistant, O/o. Prohibition and Excise Superintendent, Nellore.
5 S.Srinivasulu, Junior Assistant, O/o. Prohibition and Excise Superintendent, Atmakur.
6 Y.Venkateswarlu, Junior Assistant, O/o. Prohibition and Excise Superintendent, Nellore.
7 T.B.,Rajender Prasad, Junior Assistant, O/o Deputy Commissioner of Prohibition and Excise, Guntur.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction more in the nature of writ of Mandamus declaring the orders dated 27.2.2004 passed in O.A. No.5931 of 1999 on the file of the A.P. Administrative Tribunal, Hyderabad and consequential orders of the first respondent issued in G.O.Ms.No.815 Revenue (Excise-I(2) Department dated 15.10.2004 as illegal, arbitrary and unsustainable and consequentially direct the first and second respondents to continue the petitioner as Prohibition and Excise Sub Inspectors on regular basis, after calling for the files and pass such other order deem fit.

**Counsel for the Petitioner: MR.P.V.S.S.S.RAMA RAO**

**Counsel for the Respondent Nos.1 to 3: GP FOR PROHIBITION & EXCISE**

**Counsel for the Respondent Nos.4 to 7: MR.P.V.RAMANA (CAVEATORS)**

**WRIT PETITION No: 22580 of 2004**

Between:

1 C. Krishna Murthy, Incharge Proh. & Excise S.I.,

Tumukunta Check Post, Ananthapur District.

2 S.Narasimha Murthy S/o. Late Gopalachar
Sub Inspector, Palamaneer, Chittoor District.
3 C.Shankar Reddy S/o. C.Sunki Reddy
Sub Inspector, Sreekalahasthi, Chittoor District.

**..... PETITIONERS**

AND

1 The Government of Andhra Pradesh, represented by its Principal Secretary to Government Revenue (Excise-1 (2) Department, Secretariat, Hyderabad.

2 The Commissioner of Prohibition and Excise Andhra Pradesh, M.J.Road, Hyderabad.
3 The Deputy Commissioner of Prohibition and Excise Andhra Pradesh, Kurnool Ranga, Kurnool.
4 S.Mohan Rao S/o.Now known to the petitioners,
working as Junior Assistant, Office of the Superintendent of Prohibition and Excise, Guntur.
5 S.Srinivasulu S/o.Now known to the petitioners,
working as Junior Assistant, Office of the Superintendent of Prohibition and Excise, Atmakur.
6 Y.Venkateswarlu S/o.Now known to the petitioners,
working as Junior Assistant, Office of the Superintendent of Prohibition and Excise, Nellore.
7 T.B.Rajender Prasad S/o.Now known to the petitioners,
working as Junior Assistant, Office of the Superintendent of Prohibition and Excise, Guntur.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus, or any other appropriate writ, order or direction, declaring the orders dated.27.2.2004 passed in O.A.No.5931 of 1999 by the Hon'ble A.P. Administrative Tribunal, Hyderabad consequential G.O.Ms.No.815 Revenue (Excise I(2) Department dated.15.10.2004 issued by the 1st respondent and consequential proceedings dt.18.11.2004 of the 2nd respondent issued in Cr.No.6891/2004/CPE/H1 as illegal, arbitrary and unsustainable and consequently direct the respondents 1 to 3 herein to continue the petitioners as prohibition and excise Sub Inspectors.

**Counsel for the Petitioners: MR.T.P.ACHARYA**

**Counsel for the Respondent Nos.1 to 3: GP FOR PROHIBITION & EXCISE**

**Counsel for the Respondent Nos.4 to 7: MR.P.V.RAMANA**

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**WRIT PETITION No: 22986 of 2004**

Between:

B.Madhusudana Rao, S/o.Late Sreeramulu
Proh. & Excise S.I., Bobbili, Vizianagaram District.

**..... PETITIONER**

AND

1 The Government of Andhra Pradesh, rep. by its Principal Secretary Government (Excise-I) Department, Secretariat, Hyderabad.
2 The Commissioner of Prohibition and Excise Government of Andhra Pradesh, Hyderabad.
3 The Deputy Commissioner of Prohibition and Excise Government of Andhra Pradesh, Guntur.
4 S.Mohan Rao, Junior Assistant, O/o Prohibition and Excise Superintendent, Nellore.
5 S.Srinivasulu, Junior Assistant, O/o Prohibition and Excise Superintendent, Atmakur.
6 Y.Venkateswarlu, Junior Assistant, O/o Prohibition and Excise Superintendent, Nellore
7 T.B.Rajender Prasad, Junior Assistant, O/o Prohibition and Excise Superintendent, Guntur.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction more in the nature of writ of Mandamus declaring the orders dated 27.2.2004 passed in O.A.No. 5931 of 1999 on the file of the A.P. Administrative Tribunal, Hyderabad and consequential orders of the first respondent issued in G.O.Ms.No.815 Revenue (Excise-I(2) Department dated 15.10.2004 as illegal, arbitrary and unsustainable and consequentially direct the first and second respondents to continue the petitioner as Prohibition and Excise Sub Inspectors on regular basis, after calling for the files and pass such other order or orders.

**Counsel for the Petitioner: MR.P.V.S.S.S.RAMA RAO**

**Counsel for the Respondent Nos.1 to 3: GP FOR PROHIBITION & EXCISE**

**Counsel for the Respondent Nos.4 to 7: MR.P.V.RAMANA**

**WRIT PETITION No: 23473 of 2004**

Between:

S. Appa Rao, S/o. Late Veer Raju,
R/o. 32-6-3, Prajasakthi Nagar, Visalandhra Road, Vijayawada, Krishna District.

**..... PETITIONER**

AND

1 The Government of Andhra Pradesh, rep by its Principal Secretary to Government, Revenue (Excise-I) Department, Secretariat, Hyderabad.
2 The Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Secretariat, Hyderabad.
3 The Deputy Commissioner of Prohibition and Excise, Government of A.P. Guntur.
4 S. Mohan Rao, Junior Assistant,
O/o. Prohibition and Excise Superintendent, Nellore.
5 S. Srinivasulu, Junior Assistant,
O/o. Prohibition and Excise Superintendent, Atmakur.
6 Y. Venkateswarlu, Junior Assistant,
O/o. Prohibition and Excise Superintendent, Nellore.
7 T.B. Rajender Prasad, Junior Assistant,
O/o. Deputy Commissioner of Prohibition and Excise, Guntur.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or Order or direction more in the nature of Writ of mandamus declaring the order dated 27-2-2004 passed in O.A.No. 5931 of 1999 on the file of the A.P. Administrative Tribunal, Hyderabad and consequential orders of the first respondent issued in G.O.Ms.No. 815 Revenue (Excise-I(2) Department dated 15-10-2004 as illegal, arbitrary and unsustainable and consequentially direct the first and second respondents to continue the petitioner as Prohibition and Excise Sub-Inspector on regular basis, after calling for the file and pass such other order or orders.

**Counsel for the Petitioner: MR.P.V.RAO**

**Counsel for the Respondent Nos.1 to3: GP FOR PROHIBITION & EXCISE**

**Counsel for the Respondent Nos.4 to 7: MR.A.GIRIDHAR RAO**

**WRIT PETITION No: 40 of 2005**

Between:

1 P. Karunakar, S/o P. Ailaiah
in the O./o Deputy Commissioner (P&E), karimnagar, Karimnagar District
2 S. Roopchand John Robert, S/o Kantha Rao
O/o Prohibition and Excise Superintendent, Karimngar, Karimnager District
3 P. Rajender Reddy S/o P. Sudershan Reddy
O/o Prohibition and Excise Superintendent, Karimngar, Karimnager District

**..... PETITIONERS**

AND

1 The Government of A.P., rep by Principal Secretary, Revenue (Excise-I) Department Secretariat, Hyderabad
2 The Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Hyderabad
3 The Deputy Commissioner (P&E) Warangal
4 S. Mohan Rao Junior Assistant, O/o Prohibition and Excise Superintendent, Nellore
5 S. Srinivasulu Junior Assistant, O/o Prohibition and Excise Superintendent, Nellore
6 Y. Venkateswarly Junior Assistant, O/o Prohibition and Excise Superintendent, Nellore
7 T.B. Rajender Prasad, Junior Assistant O/o Deputy Commissioner of Prohibition and Excise, Guntur

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or direction more particularly one in the nature of writ of Mandamus by declaring the Judgment of the Hon'ble A.P. Administrative Tribunal at 27-2-2004 in O.A. No. 5931/1999 and consequential proceedings issued by the 2nd respondent in G.O.Ms. No. 815 dt 15-10-2004 as arbitrary, unjust and violative of Article 16 of the Constitution of India and consequently set a side the same and pass such other and further orders are deemed fit and proper by the Hon'ble Court.

**Counsel for the Petitioners: MR.B.VIJAYSEN REDDY**

**Counsel for the Respondents: GP FOR PROHIBITION & EXCISE**

**WRIT PETITION No: 3083 of 2005**

Between:

K.Venkateshwarlu, S/o Istari,
in the Office of the ProhibiExcise, Superintendent, Warangal, Warangal District.

**..... PETITIONER**

AND

1 The Govt. of AP. Rep. by its Principal Secretary to Government
Revenue (Excise-I) Department, Secretariat, Hyderabad.
2 The Commissioner of Prohibition and Excise, Govt. of AP., Hyderabad.
3 The Deputy Commissioner of Proh. & Excise, Warangal Division, Warangal.
4 S.Mohan Rao, S/o and aged no known
O/o The Proh. & Excise Superintendent, Athmakur.
5 S.Srinivasulu, S/o and aged no known
O/o The Proh. & Excise Superintendent, Athamakur.
6 Y.Venkateswarlu, S/o and aged no known,
O/o The Proh. & Excise Superintendent, Nellore.
7 T.B.Rajender Prasad, S/o and age not known,
O/o Deputy Commissioner of Prohibition & Excise, Guntur.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one nature of Writ of Certiorari calling for the records relating to the order of the Hon'ble AP., Administrative Tribunal dt. 27/02/2004 in OA.No.5931/1999 and the consequential G.O.Ms.No.815, dt. 15/10/2004 and quash the same by holding them as illegal, bad and arbitrary and further direct the respondents to promote the petitioner as Prohibition and Excise Sub-Inspector from the category of Junior Assistant; and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

**Counsel for the Petitioner: MR.M.RAMALINGESWARA REDDY**

**Counsel for the Respondents: GP FOR PROHIBITION & EXCISE**

The Court made the following:

***THE HON'BLE SRI JUSTICE G. BIKSHAPATHY***

***AND***

***THE HON'BLE SRI JUSTICE P.S. NARAYANA***

**WRIT PETITION Nos.20159, 20209, 21244, 21689, 21691, 21791, 22124, 22212, 22580, 22986, 23473 of 2004 AND 40 AND 3083 OF 2005**

**ORAL COMMON ORDER:- (PER PSN,J.)**

Heard at length.

2. Learned counsel on record in this batch of Writ Petitions made submissions in elaboration and certain decisions also were cited.

3. Mr. S. Mohan Rao and others – R4 to R7 in W.P.No.20159 of 2004 – applicants in O.A.No.5931 of 1999 on the file of the
A.P. Administrative Tribunal in short hereinafter referred to as Tribunal, impleaded only R1 to R3 in the Writ Petition, the Government, and challenged the validity of Rule 7, second Proviso of the A.P. Prohibition and Excise Subordinate Services Rules in short hereinafter referred to as Rules issued in G.O.Ms.No.950, Revenue (Excise-I) Department, dated 28.11.1998.

4. The Tribunal allowed the O.A. holding that the second proviso to Rule-7 of the Rules is un-constitutional. The Writ Petitioners in W.P.No.20159 of 2004 moved M.A. No.2423 of 2004 to implead them as parties in the aforesaid O.A. and Review M.A. No.2969 of 2004, but the same was rejected by the Tribunal on 07.09.2004. The other non-parties to the O.A. aforesaid as affected parties, with leave of the Court, moved this batch of Writ Petitions. The question involved being common and in view of the common counter affidavit filed in all these Writ Petitions, these Writ Petitions are being disposed of by a common order.

5. This Court issued interim directions in these Writ Petitions to continue the petitioners as Excise Sub-Inspectors pending further orders. W.V.M.P.No.470 of 2005 is moved to vacate the interim order passed in W.P.M.P.No.27984 of 2004 in W.P.No.20159 of 2004, dated 23.11.2004. In these Writ Petitions G.O.Ms.No.815, dated 15.10.2004, a consequential order also had been questioned. The said

consequential Government Order reads as hereunder:

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Public Services – The Andhra Pradesh Prohibition and Excise Sub-ordinate Service Rules – Certain amendment to rule 7 relating to Physical requirements – Orders – Issued.

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REVENUE (Excise I(2)) DEPARTMENT

G.O.Ms.No.815 Dated: 15-10-2004.

Read the following:

1. G.O.Ms.No.950 Revenue (Excise. I (2)) Department dated: 28.11.98.

2. From the Hon'ble APAT order in O.A.No.5931 of 1999 dated: 27.02.2004.

@@@

ORDER:

The Andhra Pradesh Administrative Tribunal in its order dated: 27.02.2004 in O.A.No.5931 of 1999 held as follows:

"We are of the view that, the second proviso to the Rule 7 is unconstitutional and is liable to be set aside and it is accordingly set aside".

2. After careful examination of the above order, Government have taken a decision to issue an amendment to the Andhra Pradesh Prohibition & Excise Sub-ordinate Service Rules issued in G.O.Ms.No.950 Revenue (Excise I) Department 28.11.1998.

3. Accordingly, the following notification will be published in the Extra-ordinary issue of the Andhra Pradesh Gazette dated : 18-10-2004.

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Andhra Pradesh hereby makes the following amendment to Special Rules for the Andhra Pradesh Prohibition & Excise Sub-ordinate Service Rules issued in G.O.Ms.No.950 Revenue (Excise I) Department 28.11.1998 and as amended from time to time.

Amendment

In the said rules, in rule 7, in the sub-rule (a) the "second proviso" shall be omitted.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

N.S.HARI HARAN,

SPECIAL CHIEF SECRETARY TO GOVERNEMNT

To

The Commissioner of Printing, Stationery & Stores Purchase, Andhra Pradesh, Hyderabad. (with a request to supply 100 copies of Gazette)

Copy to:

The Commissioner of Prohibition & Excise, Hyderabad.

SF/Sc.

// Forwarded :: By Order //

SECTION OFFICER."

6. Thus, it is clear that second proviso under Sub-Rule (a) Clause (a) of Rule-7 of the Rules had been omitted in the aforesaid Government Order. Rule-7 of the Rules dealing with physical requirements reads as hereunder:

"7. Physical requirements:-

(a) Every candidate for appointment by direct recruitment or by transfer or by promotion to the posts of Prohibition and Excise Sub-

Inspectors and Prohibition and Excise Constables shall possess the following physical standards:

a. For Men

(i) Must not be less than 165 cms. In height.

(ii) Must not be less than 81 cms. round the Chest on full expiration with a minimum expansion of 5 cms;

Provided further that members of candidates belonging to S.Ts. where the required quota cannot be fully utilized for want of sufficient candidates possessing the requisite height, it may be relaxed by 5 cms. so that it shall not be less than 60 cms;

Provided further that members of the Andhra Pradesh Ministerial Service working in the Proh. & Excise Department, Drivers and Attenders shall possess a minimum height of 163 cms. if they are otherwise qualified to be appointed as Prohibition and Excise Sub-Inspectors or Prohibition and Excise Head Constables respectively.

b. For Women

(i) Must not be less than 152.2 cms. in height

(ii) Must not weigh less than 45.5 kgs.

(ii) Visual standards:

All candidates, including women for direct recruitment and appointment by transfer or by promotion as Prohibition and Excise Sub-Inspectors, Prohibition and Excise Constables must be certified by an Opthalmic Surgeon (of the rank of Civil Surgeon in Govt. Service) to possess the following visual standards:

(a) (i) Right Eye: Near vision 0.5 (Snellen)

Distant 6/6

(b) (ii) Left Eye: Near vision 0.5 (Snellen)

Distant 6/6

**(b)** Each eye must have a full filed of vision.

> **(c)** Colour blindness, squint or any bordlid condition of the eyes of lids of either eye, knock, knees, pigeon chest, flat foot, vericos veins, hammber-toes, fractured limbs or decayed teeth shall be deemed to be disqualification."

7. The second proviso which had been questioned specifies that provided further that members of the A.P. Ministerial Service working in the Prohibition and Excise Department, drivers and attenders shall possess a minimum height of 163 centimeters, if they are otherwise qualified to be appointed as Prohibition and Excise Sub-Inspectors or Prohibition or Excise Head Constables respectively. The Government appears to have taken inconsistent stands before the Tribunal and before this Court. More or less, the pleadings of the parties in this batch of Writ Petitions are virtually same. The main ground of attack is that the proviso aforesaid is arbitrary and discriminatory being violative of Article 14 of the Constitution of India. It would be appropriate to have a look at the relevant findings recorded by the Tribunal in O.A.No.5139 of 1999 in this regard, the impugned order in this batch of Writ Petitions, at Para Nos.6 and 7. The Tribunal had observed as under:

> "After hearing both the counsel and after going through the material on record, we perused the impugned G.O.Ms.No.950. Rule 7 prescribed the physical requirement for the post of Excise Sub-Inspectors which comes under category II. In this rule, it was specifically stipulated that for all Men, the minimum requirement of height is 165 Cms. In respect of Schedule Tribe candidates, it was relaxed by 5 Cms making the minimum requirement of height as 160 Cms only. Even here a condition was stipulated that where the required quota for S.Ts cannot be fully filled for want of sufficient eligible candidates possessing the required height only then this relaxation has to be issued. It is also seen from this Rule that similarly in respect of Women candidates, the minimum height prescribed is 152.5 Cms. The applicants are not questioning the lesser height stipulated in respect of S.T. candidates and women. The second proviso relating to the Ministerial Service Employees is in the question. It is seen that in the second proviso, no such stipulation was made that only in case of non-availability of required number of candidates with 165 Cms as height relaxation be considered in respect of the Attenders, Drivers and Ministerial Service employees. Thus, it is a blanket relaxation given in respect of these three categories for appointment by transfer as Sub-

Inspectors. It is also to be borne in mind that this post of S.I. which is executive in nature demands physical stamina and unless, there are very strong grounds to establish that persons with adequate number are not available in the Drivers, Attenders and Ministerial Service employees, such relaxation does not seem to be justified or warranted. It is also to be further seen that in the counter filed by the department, the only stand taken is that the A.P.Excise Ministerial Employees Association in their letter requested the Government to relax the rules relating to the height to the extent of
2 Cms in the interest of the employees working in the department. No other reason was mentioned to establish any nexus or cogent relationship between the exemption provided in the rule and the objective sought for. In fact, nothing was mentioned about the objective sought for by giving such relaxation in respect of Attenders, Drivers and Ministerial Service Employees.

In addition to the above, it is also to be observed that the second proviso to this Rule 7 in respect of S.T categories of employees makes a distinction between those Attneders, Drivers and Ministerial employees with 165 Cms of height, thus creating a class within the class of same category of employees. Thus, it is making a classification between the two. It may also so happen that employees with 163 Cms., by virtue of this proviso to Rule 7 would be eligible for promotion, stealing a march over others with 165 Cm., thus, creating a heart burning among the employees. Thus, virtually in this G.O., Government created two classes of employees in the same categories of Attenders, Drivers and Ministerial Service employees and such a discrimination creating the two classes is not for any justifiable reasons. This relaxation offends the Article 14 of the Constitution of India, as we find that as held in the case of R.K.George Vs.. Union of India 1981, SC 675, does not stand for any legal scrutiny of Class IV of Article 16. Also, there was no basis laid or mentioned in the G.O. establishing the said nexus between the reduction in the height in respect of a particular class of employees and objective sought to be achieved. In fact, this relaxation goes against the very spirit with which a minimum height in respect of Men was prescribed as 165 Cms."

8. An attempt was also made to convince this Court that G.O.Ms.No.815, dated 15.10.2004, cannot be questioned before this Court straight away without approaching the Tribunal in the first instance. The said Government Order is only consequential. When the principal controversy is before the Writ Court, parties shall also question the consequential actions since the result would depend on the main controversy and it would be a futile exercise to drive the parties to the Tribunal on

that ground, hence the objection taken in this regard is liable to be rejected forthwith.

9. Promotee Incharge Prohibition and Excise Inspectors are the Writ Petitioners. The applicants in the O.A., certain Junior Assistants questioned the second proviso to Rule-7 of the Rules. Several of the details relating to Rule position had been narrated in the affidavits filed in support of the respective Writ Petitions.

Specific stand was taken that as per the Rules, the qualification for appointment to the post of Junior Assistants in the office of the Head of the Departments and Directorates is that one must hold a bachelor's degree of any university and for appointment in the offices other than the Heads of Department and Directorates is that one must have passed intermediate examination.

Hence, there are no physical standards provided for appointment to the post of Junior Assistants. Further, specific stand was taken that the A.P. Excise Ministerial Employees Association made representation to the Government during the year 1997 and requested the Government to relax the Rule relating to the height to the extent of 2 centimeters in the interest of the employees working in the department. Following the said representation, the Government after thoroughly examining the matter and keeping in view the larger interest of the employees who are eligible for appointment to the post of Prohibition and Excise Sub-Inspectors from the lower categories i.e., Attenders, Junior Assistants etc., reduced the height required to the post to certain categories for their benefit and in view of the same the Rules were re-issued vide G.O.Ms.No.950, dated 28.11.1998, and the second proviso to

Rule-7 prescribed the height as 163 centimeters for the staff under Ministerial Service Rules. This has been made the ground of attack in the O.A. aforesaid. The respondents had filed a common counter affidavit in detail wherein surprisingly they had taken a different stand to one, which the Government had initially taken before the Tribunal. After narrating the details and also the interim directions, which had been issued by this Court in the counter affidavit, the issues raised in this batch of Writ Petitions had been specified as hereunder:

> "The issues raised in the Writ Petitions are as follows:
>
> 1. The orders issued in G.O.Ms.No.815 dated 15.10.2004 are against law and are liable to be set-aside.

2. The Writ petitioners were already appointed as In-charge Prohibition & Excise Sub-Inspectors well before the orders issued in O.A.No.5931/99 dated: 27.02.2004 and as such they are entitled to be continued as In-charge Prohibition & Excise Sub-Inspectors.

3 . The Writ petitioners were not impleaded as respondents in O.A.No.5931/99 wherein orders were issued to the effect that, the relaxation given in height is against Law and the same set aside.

4. The Writ Petitioners were admitted to duty only after satisfied as regards to the physical fitness and consideration of the height once against while appointing as in-charge Prohibition & Excise Sub-Inspectors is unwarranted.

5. The directions issued by the Commissioner of Prohibition & Excise vide Cr.No.6891/2004/H1 dated 18.11.2004 deserves to be set-aside."

10. Further, the other details also were narrated justifying the stand taken by the respondents in this regard on the ground that the deletion or the omission made in G.O.Ms.No.815 is also justified. In ***STATE OF MAHARASHTRA v JAGANNATH ACHYUT KARANDIKAR*** the Apex Court held as under:

"We are not concerned herein about the seniority of persons in whose favour the government has made individual orders extending the period for passing the examination. We will consider such cases a little later. For the present, we may examine the rights of those "Late Passing" where the government has not made any specific order relaxing the conditions for passing the examination. Under the 1951 Rules, the candidate could appear for the examination after two years of his entering into the cadre. He has three chances and he must pass within six years of his joining service. Under the 1962 Rules the scheme provided was slightly different. Under that scheme, candidate was allowed to take the examination only after completing five years' service in the cadre. He had three chances for taking the examination and that must be availed of within four years. That means he must pass the examination within the nine years' service. Under both the Rules, the government was required to hold the examination every year, but no examination was held in 1968, 1969 and 1970. This is not in dispute. For a proper appreciation of the question raised, we must first try to understand the hardship resulted by not holding the examination in 1968, 1969 and 1970. It is as follows: The candidates recruited in 1960 have lost one chance in 1968. Those recruited in 1961 are deprived of two chances in 1968, 1969 and 1970

and those of the year 1963 have lost two chances in 1969 and 1970. The last batch to lose one chance in 1970 is of the year 1964.

The aforesaid Rules expressly provided power to the government to grant more chances for passing the examination in any individual case or in class of cases. Under the 1955 Rules, the government preserved power to dispense with, or relax the requirements of any rule regulating "the conditions of service of government servants; or of any class thereof". In the exercise of this power, the government could dispense with or relax the operation of any rule, if it causes undue hardships in any particular case. it is needless to state that this power includes the power to relax the conditions prescribed for promotion since promotion is a condition of service. There is no restriction as to the exercise of the power or discretion. The High Court, however, has observed that the scope of this power has been constrained by the circular dated January 15, 1962. The circular states that the 1955 Rules permitting relaxation cannot be utilized to relax the rules which regulate conditions of service. It further states that the scope of the Rules should be limited only to matters relating to traveling allowance, leave, etc. But this appears to be an exercise in vain. The circular is an executive instruction whereas the 1955 Rules are statutory since framed under the proviso to Article 309 of the Constitution. The government could not have restricted the operation of the statutory rules by issuing the executive instruction. The executive instruction may supplement but not supplant the statutory rules. The High Court was in error in ignoring this well accepted principle."

11. In ***K. NARAYANAN & OTHERS v STATE OF KARNATAKA & OTHERS*** the Apex Court held as under:

"Demarcation of cadres or gradation in the same cadre on higher and lower qualification is a common phenomenon for fixing hierarchy in services. It is a valid basis of classification as held by this Court in *State of Mysore v. P.Narasing Rao* (1968) 1 SCC 407: AIR 1968 SC 349: (1968) 2 LLJ 120, *Union of India v. Dr. S.B.Kohli (Mrs)* (1973) 3 SCC 592: 1973 SCC (L&S) 136, *State of J & K v. Triloki Nath Khosa* (1974) 1 SCC 19: 1974 SCC (L&S) 49, *P.Murugesan v. State of T.N.* (1993) 2 SCC 340: 1993 SCC (L&S) 445: (1993) 24 ATC 149: JT (1993) 2 SC 115 Engineering services throughout the country, normally, maintain distinction between Junior and Assistant Engineer on diploma and degree. It existed in the State of Karnataka right from the day the rules were framed. It has been done away with on assumption by the Cabinet that some of the duties performed by the two were common. The Tribunal did not agree with it, and in our opinion rightly. But that alone is not sufficient to strike down the rule. A policy decision taken by the Government is not liable to interference, unless the Court is satisfied that the rule-making authority has acted arbitrarily or in violation of the fundamental rights

guaranteed under Articles 14 and 16. Appointment by transfer in the same service or from the different cadre or service but equal in rank and status is well known. But transfer from lower to higher cadre not by promotion but direct appointment only because the incumbent became eligible without any selection, test or criteria may not be in consonance with service discipline. What the rules contemplate is that once a Junior Engineer acquires a degree qualification then he automatically should be deemed to have become an Assistant Engineer. An employee occupying a higher post in different cadre may on regularization be entitled to claim his seniority from the date he was holding the post but giving a higher post in different cadre in which the employee has never worked either as officiating or temporary or even ad hoc because the employee became eligible earlier would be violative of the right of equality. The methodology adopted in the rules by transferring such a person and placing him in the category of direct recruits from the date of acquiring the degree the Government in our opinion violated the basic norms of appointment and recruitment to any particular service. The Government may appoint all the Junior Engineers en bloc after framing of the rule and place them below all those who were working as Assistant Engineers on that date but they cannot be so appointed as to get precedence over those who are working from before. It would result in artificially making unequals as equals. Any person entering the service can justly feel secure of equality in continuance, promotion etc. Any executive action violating it cannot be upheld. Seniority is an incident of service which cannot be enroded or curtailed by a rule which operates discriminately. The purpose of opening evening classes and permitting diploma holders to study was to improve efficiency in service and provide better service conditions. When rules were framed and provisions for appointment by transfer was made both these objectives were achieved. But operation of the rule with retrospective effect has no nexus with either except that it may result in undue benefit to one class of employees over the other. The impugned rules having been framed in 1985 with effect from 1976 result in entry of diploma holders as Assistant Engineer only because they became qualified as against those who entered in service before or after 1976 by competitive process. *Devi Prasad(2)* was upheld by this Court because it was found, 'as reasonable and in the circumstances fair'. The dispute was between non-graduate diploma holders working as supervisors etc. and graduates working as Junior Engineers. Since the Court found that there was functional parity between supervisors and Junior Engineers the rule framed by the Government giving weightage of four years to supervisors to make them eligible for appointment as Assistant Engineer was not invalid. But there can be no functional parity between; employees of two different cadres. It would be too dangerous to accept such assumption. In *R.N. Babhybdaooa v, Tgimmiah* (1972) 2 SCC 409 this Court struck down a rule for violation of Article 14 as it had attempted to bypass the regular method of recruitment by competitive examination or by selection or by promotion and provided for regularization of a government servant working on deputation as deemed to have been appointed. I n *State of A.P v. K.S.Muralidhar* (1992) 2 SCC 241: 1992 SCC (L&S) 539: (1992) 20 ATC 226

the temporary supervisor who had succeeded before this Court in *Devi Prasad case (2)* claimed seniority from the date of acquiring academic qualification. It was repelled and it was held that it could be from the date of appointment only.

After 309 of the constitution empowers the appropriate Legislature to frame rules to regulate recruitment to public services and the post. "Recruitment' according to the dictionary means 'enlist'. It is a comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well-known methods of recruitment. Even appointment by transfer is not unknown. But any rule framed is subject to other provisions of the Constitution. Therefore, it has to be tested on rule of equality. Transfer is normally resorted in same cadre. But when it is made in a different and higher cadre it must not be violative of constitutional guarantee and the rule of fairness. Providing for appointment of a diploma holder from the cadre of Junior Engineer to Assistant Engineer from back date without any test or selection on eligibility only does not sound reasonable and fair. Why was it done is apparent from the following notings by the Secretary:

> "The most important issue was regarding the date of transfer of the Junior Engineer acquiring graduate qualifications, the weightage of past service had to be taken into consideration. In the proposals submitted to the cabinet this crucial aspect was not outlined specifically and the impression that was created was that the transfer would take place with prospective effect. In such an event the weightage of previous service would have to be confined only upto date of graduation and this would not have been of any advantage to most of the Junior Engineers who have acquired the degree qualification several years ago. Even if the weightage of past service after graduation and upto the date of appointment as Junior Engineers was given the transferees would not have gained any significant advantage in the matter of notional seniority. The Karnataka Graduate Engineers have strongly represented on this issue and have urged that their transfer to the Assistant Engineer's cadre should be with retrospective effect i.e., from the date they have acquired graduate qualification. In support of their arguments they have pointed out that even in Andhra Pradesh a similar step was taken in that the transfer was allowed with retrospective effect. The points raised by the Graduate Engineers Association have been examined and it is felt that their

demand to have the transfer effected with retrospective effect has some justification in view of the long years of service rendered by the Junior Engineers before and after acquiring graduate qualification. If this benefit is not given, the amendment to the C&R Rules allowing for their transfer would be of little use for many of the senior members of the Graduate Engineers Association who have been fighting for this change for many years. Therefore taking an overall sympathetic view it is proposed that we may allow for the transfer of Junior Engineers who acquired graduate qualifications with retrospective effect from the date of acquisition of such qualification subject to the availability of vacancies at that time in the Assistant Engineer's cadre. It is seen that the first batch of the in-service Junior Engineers took their graduate degree in 1976 and hence the notification amending the rules would have to be effective from January 1, 1976."

Rules were thus bent and made retrospective as a sympathetic consideration as many Junior Engineers who were working since long would not have derived any benefit otherwise. May be true but if the extension of such benefit impinges upon the constitutional guarantee of equality then it cannot be upheld. And that does stand disturbed. Nothing further need be said. Nor it is necessary to pronounce on the validity of a rule which in the class of appointment by direct recruitment includes appointment by transfer resulting in entry of one class by competition or selection and other by acquisition of minimum qualification as the appellants did not challenge the rule of appointment by transfer but confined their claim to its operation retrospectively."

12. Likewise in ***P. MURUGESAN & OTHERS v STATE OF TAMIL NADU & OTHERS*** the Apex Court held as under:

"It is true that theory of classification should not be carried too far lest it may subvert, perhaps submerge, the precious guarantee of equality, as pointed out by Chandrachud, J. in *State of J & K v. Triloki Nath Khosa* (1974) 1 SCC 19; 1974 SCC (L&S) 49; (1974) 1 SCR 771). Minute and microcosmic classification should not be permitted nor should the Court countenance "mini-classification based on micro-distinctions", as pointed out by Krishna Iyer, J. in the same case. Looked at from this broad angle, it may appear there is some force in what the respondents contend viz., that once the graduate

engineers and diploma holder engineers constitute one class, perform same duties and discharge same responsibilities, placing a restriction on the diploma holders alone (limiting their chances of promotion to one out of four promotions, as has been done by the impugned Amendment) is not justified but this may be a too simplistic way of looking at the issue. We cannot fail to take note of the fact that right from 1974 i.e., since the decision of the Constitution Bench in Triloki Nath Khosa this Court has been holding uniformly that even where direct recruits and promotees are integrated into a common class, they could for purposes of promotion to the higher cadre be classified on the basis of educational qualifications.

The learned Judge held that judged from the above standpoint it was impossible to accept the proposition that the classification of assistant engineers into degree holders and diploma holders rests on any unreal or unreasonable basis. They accepted the plea that the said classification was brought about with a view to achieving administrative efficiency in the engineering services. The higher academic qualifications, the learned Judge held, is at least presumptive evidence of a higher mental equipment. The learned Judge said, "What is relevant is that the object to be achieved here is not a mere pretence for an indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend," The learned Judge referred to the earlier decision of this Court in *State of Mysore v. P.Narasing Rao* (1968) 1 SCR 407; AIR 1968 SC 349; (1968) 2 LLJ 120) and *Union of India v. Dr (Mrs) S.B. Kohli* (1973) 3 SCC 592; 1973 SCC (L&S) 136; AIR 1973 SC 811) to demonstrate that a distinction made on the basis of academic qualifications was always upheld by this Court. Indeed, in the latter case, the relevant rule required that a professor of orthopaedics must have a post-graduate degree in the particular speciality. It was upheld as a relevant requirement. The learned Judge then explained the decision in *Roshan Lal Tandon v. Union of India* (1968) 1 SCR 185; AIR 1967 SC 1889; (1968) 1 LLJ 576) (upon which substantial reliance was placed by the respondents in that case) as an authority certainly for the proposition that "no discrimination could be made between promotees and direct recruits by reference to the source from which they were drawn" but that it does not bar a classification based upon academic qualifications. In the words of Chandrachu, J.:

"Roshan Lal Tandon Case is thus no authority for the proposition that if direct recruits and promotees are integrated into one class, they cannot be classified for purposes of promotion on a basis other than the one that they were drawn from different sources."

Having thus distinguished Roshan Lal Tandon case and *Mervyn Continho v. Collector of Customs*, the learned Judge concluded:

"We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be

classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma holders does not violate Articles 14 and 16 of the Constitution and must be upheld."

13. Strong reliance was placed on the decision of the Division Bench of this Court reported in ***B.ANANDA RAMA RAO & OTHERS v STATE OF ANDHRA PRADESH & OTHERS*** wherein the Division Bench held as under:

"Some of the Writ petitions are filed against the order of the Tribunal as well as G.O.Ms.No.325, dated 15.06.1999 and some of the writ petitions are filed by the Civil Assistant Surgeons and Professors by taking leave of the Court against G.O.Ms.No.325, dated 15.06.1999.

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In view of the changed circumstances, whereunder the Government acted upon the impugned judgment of the Tribunal and issued G.O.Ms.No.325, dated 30.06.1999, though we are however inclined to consider the controversy, nevertheless wish to lay down that this Court or the Tribunal in matters of seniority should not ordinarily interfere with the executive function either before the preparation of seniority list or at the stage of provisional seniority list, and it is only the final seniority list that can be said to give rise to any grievance to the public servant.

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A.P. Medical and Health Service Rules, 1982 were amended in 1988 vide G.O.Ms.No.182, dated 29.3.1988. After amendment, the rules enable to appoint a Civil Assistant Surgeon as Assistant Professor by selection on regular basis by a duly constituted Committee. The interpretation placed by the Tribunal in the earlier O.A., which was followed in O.A.No.4762 of 1994, and the interpretation placed on the rules by this Court in W.P.No.1102 of 1998, in our considered opinion, is mainly based on the amendment introduced to the Special Rules by G.O.Ms.No.182, dated 29.3.1988, and cannot be treated as an authority for the proposition that the service as Civil Assistant Surgeon, both qualified and unqualified, prior to the appointment as Assistant Professor should be ignored for the post of reckoning seniority of Civil Assistant Surgeons to be considered for the post of Professors. Therefore, we have to necessarily see whether the Civil Assistant Surgeons appointed between 1964 and 1982 stand to lose their service rendered prior to their appointment as Assistant Professors. A similar issue came up before the Supreme Court in Dr.N. Ramachandra Rao's case (supra). Rule 2 of the Special Rules after amendment by G.O.Ms.No.182, fell for consideration

before the Apex Court. The said rule provided that the post of Additional Director of Medical and Health Services, Principals of Medical Colleges, Superintendents of Teaching General hospitals etc., shall be filled up by promotion from among the holders of posts of Professors in category II and III with not less than three years of service, of which at least two years shall be in one of the said categories of the year in which the panel is prepared. A contention was raised that seniority for zone of consideration should be of the feeder cadre, and not any other cadre. So to say, it was contended that the service rendered prior to the appointment as Professor in category II and III should be ignored, and only the service rendered after the appointment to the said feeder cadre should be considered for promotion to the post of Additional Director of Medical and Health Services etc. The Supreme Court rejected the same and held thus:

"Rule 2 does not expressly exclude the service in Class II Cadre for preparing panel for consideration for promotion to the posts with which we are concerned. We also consider that it would be unreasonable and unjust to exclude the service and overlook the vertical seniority in the substantive cadre to which everyone was selected by the Public Service Commission. In medical profession there are specialities and specialities, but it is generally accepted that they are not of equal importance or utility. However, the promotions are allowed on the basis of the respective specialities and the availability of promotional vacancies in such specialities. A junior with relatively less important speciality may be fortunate enough to get quick promotion than his senior with a different speciality. We are of the opinion that the juniors who get accelerated promotion on account of fortuitous circumstances depending upon their speciality and availability of vacancies in such speciality should not be allowed to march over their seniors for appointment to administrative posts. Any advantage gained by juniors on such fortuitous circumstances of having some speciality and promotion should not impair the rights of their seniors for promotion to posts where speciality or teaching experience is not called for. The seniority determined in order of speciality should not therefore be the basis for promotion to administrative posts. Any rule providing for the contrary may be vulnerable to attack on the ground of arbitrariness."

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In the result, for the reasons aforementioned, we allow W.P.No.13923 of 1999, and set aside the impugned order dated 10.03.1999 in O.A.No.3599 of 1999 and batch. Consequently, G.O.Ms.No. 325, dated 15.06.1999, also stand set aside."

14. Further, reliance was placed on the under noted decisions reported in ***R.K. GARG v. UNION OF INDIA & OTHERS***; ***MANGEJ SIGH & OTHERS v. UNION OF INDIA & OTHERS***; ***DR.P.NALLA THAMPY TERAH v. UNIONOF INDIA & OTHERS***; ***THE COMMISSIONER, CORPORATIONOF MADRAS v. MADRAS CORPORATION TEACHERS' MANDRAM & OTHERS*** and ***V.K. SOOD v. SECRETARY, CIVIL AVIATION & OTHERS***. Relaxation of eligibility criteria for Scheduled Castes, Scheduled Tribes and Backward Classes, in fact had been discussed in ***S.S. Sharma Vs Union of India*** (1980 (3) SLR 519), wherein the Apex Court while dealing with this aspect placed reliance on 1976 (1) SRC 906 and also 1963 Supp.1 SCR 439. After thoroughly discussing the aspect relating to the relaxation of the eligibility criteria, the Apex Court ultimately held that such relaxation of eligibility criteria would be justified.

15. The power of the Government as rule making authority to give certain relaxations had been well upheld in a catena of decisions by the Apex Court and different High Courts as well.

No doubt, it should be just and reasonable but not arbitrary or discriminatory. The ground of attack is that relaxation of 2 centimeters by second proviso to Rule-7 would affect the efficient functioning of the executive posts. Except making this bald statement, the respondents in these Writ Petitions were unable to substantiate how the administrative efficiency would be affected by this relaxation. It is needless to say that relaxation of eligibility criteria is being given in the case of women and it is needless to say that as already observed supra such relaxation of eligibility criteria is being extended in the case of Scheduled Castes, Scheduled Tribes and Backward Classes as well. The presumption is in favour of the constitutionality of the Rule and the parties attacking the same may have to establish and show how the said proviso is unconstitutional. The reasons recorded by the Tribunal have already been referred to supra. The Government having taken a particular stand before the Tribunal now, as reflected in the counter affidavit, changed the stand evidently in the light of G.O.Ms.No.815, which is a consequential action of Government.

16. Be that as it may, to liberalize the promotion avenue on the representation made by the employees association, Government thought it fit to grant 2 centimeters

relaxation. This proviso in the considered opinion of this Court is just and reasonable and does not suffer from the vice of arbitrariness or the vice of discrimination so as to strike down the same in view of the Article 14 of the Constitution of India. The classification by some degree may produce some inequality and that by itself would not be sufficient to attract Article 14 of the Constitution of India. Different treatment *per se* would not constitute violation of Article 14, unless there is no reasonable basis for differentiation. In ordinary sense, the expression "reasonable" may have to be understood as just, fair and proper. This is the area where the Writ Courts are expected to judge in a given case on the touchstone of the Article 14 of the Constitution of India and the violation thereof, if any. This view of ours is in consonance with the settled principles of service jurisprudence in this regard.

17. In the light of the decisions referred to supra and also in the light of the views expressed by this Court, this Court is left with no other option except to uphold the validity of the proviso aforesaid and further hold that G.O.Ms.No.815 - a consequential action to be bad in law.

18. The Writ Petitioners are bound to succeed and the same are accordingly allowed.

19. Before parting with the case, it is observed that to be an ideal administrator, Government is expected to take consistent stand in such matters. However, in the peculiar facts and circumstances of the case, this Court makes no order as to costs in the batch of cases.

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**G. BIKSHAPATHY, J**

**P.S. NARAYANA, J**

Date: 26.04.2005

Note:- LR copy to be marked.

(B/o)

ES

One fair copy to the Hon'ble Mr.Justice G. Bikshapathy.

(For his Lordship's kind perusal)

One fair copy to the Hon'ble Mr.Justice P.S. Narayana.

(For his lordship's kind perusal)

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THE HON'BLE SRI JUSTICE P.S. NARAYANA

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+WRIT PETITION Nos.20159 OF 2004 & batch

%Dated 26-04-2005

# P. Vijaykumar & another ….. Petitioners

in WP.20159/04

S. Sirajuddin & others …..Petitioners in

WP.20209/04

K.S.C. Shekar & others …..Petitioners in

WP.21244/04

P. Bikshapathy Rao & others …..Petitioners in

WP.21698/04

M. Anjaneyulu & another …..Petitioners in

WP.21691/04

M. Yesudas & others …..Petitioners in

WP.21791/04

T. Vittal Singh …..Petitioner in

WP.22124/04

G. Ravi Verma …..Petitioner in

WP.22212/04

S. Narsimha Murthy & others …..Petitioners in

WP.22580/04

B. Madhusudan Rao …..Petitioner in

WP.22986/04

S. Appa Rao …..Petitioner in

WP.23473/04

P. Karunakar & others …..Petitioners in

WP.40/2005

K. Venkateshwarlu …..Petitioner in

WP.3083/05

**VERSUS**

$ The Govt. of A.P., rep., by its ….. Respondents

Principal Secretary & others. in WP.20159/04

The Govt. of A.P., rep., by its ….. Respondents

Principal Secretary & others. in WP.20209/04

The Govt. of A.P., rep., by its ….. Respondents

Principal Secretary & others. in WP.21244/04

S. Mohan Rao & others ….. Respondents

in WP.21689/04

S. Mohan Rao & others ….. Respondents

in WP.21691/04

The Govt. of A.P., rep., by its ….. Respondents

Principal Secretary & others. in WP.21791/04

The Govt. of A.P., rep., by its ….. Respondents

Spl. Chief Secretary & others. in WP.22124/04

The Govt. of A.P., rep., by its ….. Respondents

Principal Secretary & others. in WP.22212/04

The Govt. of A.P., rep., by its ….. Respondents

Principal Secretary & others. in WP.22580/04

The Govt. of A.P., rep., by its ….. Respondents

Principal Secretary & others. in WP.22986, 23473/04, 40 & 3083/05

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^Counsel for Respondents (in all Writ Petitions): GP FOR PROHIBITION & EXCISE.

<GIST:

> HEAD NOTE:

? Cases referred

1. 1989 SUPP. (1) SCC 393
2. 1994 SUPP. (1) SCC 44
3. (1993) 2 SCC 340
4. 2001 (4) ALD 289 (DB)

5. (1981) 4 SCC 675
6. (1998) 9 SCC 471
7. 1985 (SUPP) SCC 189
8. AIR 1997 SC 2131

9. AIR 1993 SC 2285